

111TH CONGRESS
1ST SESSION

S. 710

To prohibit unfair or deceptive acts or practices relating to gift certificates, store gift cards, and other general-use prepaid cards, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 2009

Mr. SCHUMER (for himself and Mr. UDALL of Colorado) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To prohibit unfair or deceptive acts or practices relating to gift certificates, store gift cards, and other general-use prepaid cards, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Gift Card Act
5 of 2009”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) DEBIT CARD.—The term “debit card” has
9 the meaning given the term in section 603(r)(3) of

1 the Fair Credit Reporting Act (15 U.S.C.
2 1681a(r)(3)).

3 (2) DORMANCY FEE; INACTIVITY CHARGE OR
4 FEE.—The terms “dormancy fee” and “inactivity
5 charge or fee” mean a fee, charge, or penalty for
6 non-use or inactivity of a gift certificate, store gift
7 card, or general-use prepaid card.

8 (3) FINANCIAL INSTITUTION.—The term “fi-
9 nancial institution” has the meaning given the term
10 in section 603(t) of the Fair Credit Reporting Act
11 (15 U.S.C. 1681a(t)).

12 (4) GENERAL-USE PREPAID CARD, GIFT CER-
13 TIFICATE, AND STORE GIFT CARD.—

14 (A) GENERAL-USE PREPAID CARD.—The
15 term “general-use prepaid card” means a card
16 or other electronic payment device issued by a
17 financial institution or licensed money trans-
18 mitter that is—

19 (i) redeemable at multiple, unaffiliated
20 merchants or service providers, or auto-
21 mated teller machines;

22 (ii) issued in a requested amount
23 whether or not that amount may, at the
24 option of the issuer, be increased in value
25 or reloaded if requested by the holder;

1 (iii) purchased or loaded on a prepaid
2 basis; and

3 (iv) honored, upon presentation, by
4 merchants for goods or services, or at
5 automated teller machines.

6 (B) GIFT CERTIFICATE.—The term “gift
7 certificate” means a written promise that is—

8 (i) redeemable at a single merchant or
9 an affiliated group of merchants that share
10 the same name, mark, or logo;

11 (ii) issued in a specified amount and
12 cannot be increased;

13 (iii) purchased on a prepaid basis in
14 exchange for payment; and

15 (iv) honored upon presentation by
16 such single merchant or affiliated group of
17 merchants for goods or services.

18 (C) STORE GIFT CARD.—The term “store
19 gift card” means a plastic card or other elec-
20 tronic payment device that is—

21 (i) redeemable at a single merchant or
22 an affiliated group of merchants that share
23 the same name, mark, or logo;

1 (ii) issued in a specified amount and
 2 may or may not be increased in value or
 3 reloaded;

4 (iii) purchased on a prepaid basis in
 5 exchange for payment; and

6 (iv) honored upon presentation by
 7 such single merchant or affiliated group of
 8 merchants for goods or services.

9 (D) EXCLUSIONS.—The terms “general-
 10 use prepaid card”, “gift certificate”, and “store
 11 gift card” do not include a written promise,
 12 plastic card, or other electronic device that is—

13 (i) used solely for telephone services;

14 or

15 (ii) associated with a demand deposit,
 16 checking, savings, or similar account
 17 that—

18 (I) is in the name of an indi-
 19 vidual or on behalf of an individual at
 20 a bank or financial institution; and

21 (II) provides payment solely by
 22 debiting such account.

23 (5) LICENSED MONEY TRANSMITTER.—The
 24 term “licensed money transmitter” means a person
 25 who sells or issues payment instruments or engages

1 in the business of receiving money for transmission
2 or transmitting money within the United States or
3 to locations abroad by any and all means, including
4 payment instrument, wire, facsimile, or electronic
5 transfer.

6 (6) SERVICE FEE.—The term “service fee”
7 means a periodic fee, charge, or penalty for holding
8 or use of a gift certificate, store gift card, or gen-
9 eral-use prepaid card.

10 **SEC. 3. UNFAIR OR DECEPTIVE ACTS OR PRACTICES RE-**
11 **GARDING GIFT CARDS.**

12 (a) PROHIBITION ON IMPOSITION OF FEES OR
13 CHARGES.—

14 (1) IN GENERAL.—Except as provided under
15 paragraphs (2) through (4), it shall be unlawful for
16 any person to impose, with respect to a gift certifi-
17 cate, store gift card, or general-use prepaid card, a
18 dormancy fee, inactivity charge or fee, or a service
19 fee.

20 (2) EXCEPTION.—A dormancy fee, inactivity
21 charge or fee, or service fee may be charged with re-
22 spect to a gift certificate, store gift card, or general-
23 use prepaid card if—

1 (A) such certificate or card has a remain-
2 ing value of \$5 or less at the time such charge
3 or fee is assessed;

4 (B) such charge or fee does not exceed \$1;

5 (C)(i) there has been no activity with re-
6 spect to the certificate or card in the 24-month
7 period ending on the date the charge or fee is
8 imposed; and

9 (ii) the certificate or card was issued more
10 than 24 months before such date;

11 (D) the holder of the certificate or card
12 may reload or add value to the certificate or
13 card; and

14 (E) the disclosure requirements of para-
15 graph (3) are met.

16 (3) DISCLOSURE REQUIREMENTS.—The disclo-
17 sure requirements of this paragraph are met if—

18 (A) the gift certificate, store gift card, or
19 general-use prepaid card clearly and conspicu-
20 ously states in at least 10-point type—

21 (i) that a dormancy fee, inactivity
22 charge or fee, or service fee may be
23 charged;

24 (ii) the amount of such fee or charge;

1 (iii) how often such fee or charge may
2 be assessed; and

3 (iv) that such fee or charge may be
4 assessed for inactivity; and

5 (B) the issuer of such certificate or card
6 informs the purchaser of such charge or fee be-
7 fore such certificate or card is purchased, re-
8 gardless of whether the certificate or card is
9 purchased in person, over the Internet, or by
10 telephone.

11 (4) EXCLUSION.—The prohibition under para-
12 graph (1) shall not apply to gift certificates that—

13 (A)(i) are distributed pursuant to an
14 award, loyalty, or promotional program; and

15 (ii) with respect to which there is no
16 money or other value exchanged; or

17 (B)(i) expire not later than 30 days after
18 the date they are sold; and

19 (ii) are sold below the face value of the cer-
20 tificate to an employer or to a nonprofit or
21 charitable organization for fund-raising pur-
22 poses.

23 (b) PROHIBITION ON SALE OF GIFT CARDS WITH
24 EXPIRATION DATES.—

1 (1) IN GENERAL.—Except as provided under
 2 paragraph (2), it shall be unlawful for any person to
 3 sell or issue a gift certificate, store gift card, or gen-
 4 eral-use prepaid card that is subject to an expiration
 5 date.

6 (2) EXCEPTIONS.—A gift certificate, store gift
 7 card, or general-use prepaid card may contain an ex-
 8 piration date if—

9 (A) the expiration date is not less than 5
 10 years after the date on which the card is pur-
 11 chased; and

12 (B) the terms of expiration are promi-
 13 nently disclosed in all capital letters that are at
 14 least 10-point type.

15 **SEC. 4. RELATION TO STATE LAWS.**

16 This Act and any regulations or standards estab-
 17 lished pursuant to this Act shall not supersede any provi-
 18 sion of State law with respect to dormancy fees, inactivity
 19 charges or fees, service fees, or expiration dates of gift
 20 certificates, store gift cards, or general-use prepaid cards.

21 **SEC. 5. ENFORCEMENT.**

22 (a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A
 23 violation of this Act shall be treated as a violation of a
 24 rule defining an unfair or deceptive act or practice pre-

1 scribed under section 18(a)(1)(B) of the Federal Trade
2 Commission Act (15 U.S.C. 57a(a)(1)(B)).

3 (b) ACTIONS BY THE COMMISSION.—The Federal
4 Trade Commission shall enforce this Act in the same man-
5 ner, by the same means, and with the same jurisdiction,
6 powers, and duties as though all applicable terms and pro-
7 visions of the Federal Trade Commission Act (15 U.S.C.
8 41 et seq.) were incorporated into and made a part of this
9 Act.

10 (c) INDIVIDUAL CAUSE OF ACTION.—Nothing in this
11 Act shall be construed to limit an individual's rights to
12 enforce a State law relating to unfair or deceptive acts
13 or practices.

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